



April 6, 2022

Via Email

Mary T. Bassett, M.D., M.P.H.
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Basil Seggos, Esq.
Commissioner
New York State Department
of Environmental Conservation
625 Broadway
Albany, NY 12233

Re: Protecting the Downstate Drinking Water Supply via Watershed Stewardship

Dear Commissioners Bassett and Seggos:

Twenty-five years ago, New Yorkers from around the state celebrated the signing of the Watershed Agreement—a partnership of Catskill-region communities, New York City, New York State, the U.S. Environmental Protection Agency and environmental organizations to protect the quality of the nation’s largest municipal water supply and assure economic vitality in the Catskill region that is the source of high-quality drinking water for half the State’s population. Since then, stakeholders including Riverkeeper and NRDC have worked to their mutual benefit to advance this mission. We are grateful to *all* stakeholders for their dedication and cooperation in implementing this landmark agreement.

Among the benefits to Watershed communities flowing from the Agreement has been a New York City Watershed Protection Program that spends roughly \$100 million annually to protect water quality at the source.¹² The City has invested tens of millions of dollars throughout the Catskill and Delaware watersheds for sewage infrastructure upgrades, septic tank repair and replacement, roadway repair and repaving, stream bank stabilization, agricultural preservation, and small business economic development. Pursuant to negotiations with upstate communities, the City recently committed to expand these investments in the region. The City is also in the process of

¹ The National Academies of Sciences Engineering and Medicine, Review of the New York City Watershed Protection Program 1 (2020).

² *Id.* at 394.

moving DEP staff into a newly constructed office building in Arkville (Delaware County), co-located with the Catskill Watershed Corporation. And the City's Watershed Protection Program has resulted in the safeguarding of hydrologically critical Watershed lands that have been preserved for conservation and are, for the most part, available for recreational use by Catskill residents and tourists alike.

As a result of these various initiatives, 9.5 million Downstate New Yorkers benefit daily from clean, healthy, unfiltered drinking water protected at the source. Moreover, the roughly \$100 million yearly cost of the Watershed Protection Program has widely been recognized as a fiscally sound investment. By protecting its waters at the source and avoiding construction of a massive, energy-consuming filtration plant, DEP has saved water ratepayers more than \$8 to \$10 billion in initial capital costs, plus annual maintenance costs of at least \$365 million, while expending hundreds of millions throughout the upstate watershed region.

On balance, most stakeholders agree that the Watershed Agreement is working as intended. But the partnership also benefits from periodic review and discussion among all stakeholders. Indeed, the particulars of the Watershed Protection Program are currently under review by the State Departments of Health and Environmental Conservation, in preparation for a revised New York City Filtration Avoidance Determination, pursuant to the federal Safe Drinking Water Act. As part of their recent study, The National Academies of Sciences, Engineering and Medicine (the "National Academies") have identified several important water quality and community vitality matters for action. We highlight two of them below: the continuing importance and evolution of the Land Acquisition Program and the need for an in-depth study and ongoing support for watershed community vitality.

I. Land Acquisition Is an Indispensable Part of Maintaining Filtration Avoidance and a Prerequisite for Other City Investments in the Catskill Region

The National Academies of Sciences, in their recent study, state: "Programs to acquire land and easements to control pollution-generating activities within a watershed are a key component of most watershed control programs"³ These programs, the National Academies report, "are designed to maintain or enhance current water quality by preventing future development and deleterious activities."⁴ And the National Academies correctly conclude that such programs are necessary to assure compliance with the federal Safe Drinking Water Act's Surface Water Treatment Rule. That rule specifies that a municipal water provider seeking to avoid the Safe Drinking Water Act's filtration requirement must demonstrate "through ownership and/or written

³ *Id.* at 201.

⁴ *Id.* at 202.

agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water.”⁵

New York stands alone as the only major American city with an unfiltered drinking water supply where less than half of its watershed lands are protected in perpetuity. Seattle and San Francisco all own or control virtually their entire watersheds. Boston has more than 50% of its Quabbin Reservoir watershed lands under protective ownership or control. In contrast, only 40% of New York’s Catskill and Delaware watersheds is permanently protected.⁶

Protecting water quality via filtration avoidance is complex and challenging task. Preservation of hydrologically sensitive lands remains critical for the future of the Watershed. New York City must continue its voluntary, willing-buyer, willing-seller land acquisition program to protect against both current threats and growing risks from our changing climate. This is especially true with respect to the intermittently turbid Catskill System. To be sure, the Land Acquisition Program has matured over the years and continues to evolve. The Program’s focus now, and over the last several years, has been narrowly targeted to lands of the highest water quality protection value. And while this means that the acreage totals of fee simple lands acquired (all purchased from willing sellers, of course) have been, and will continue to be, lower than in the early years of the program, fee simple acquisition must remain an important tool to be used strategically and in carefully defined circumstances.

Consistent with that approach, the National Academies recommended that, moving forward, the land acquisition program should “focus on acquisition of the most valuable lands for water quality protection” and “shift funding and emphasis to acquiring riparian lands on critical areas of tributary streams through the Flood Buy-Out and Streamside Acquisition programs.”⁷ The report envisioned future purchases of parcels having the greatest potential impact on water quality.

We agree. We urge the State—in addition to directing the continuation of a finely tuned and well-targeted fee simple land acquisition program—to advance implementation of the National Academies recommendations to expand the Streamside Acquisition Program and Flood Buy-Out Program.

The Streamside Acquisition Program “tightly focuses on properties that make the biggest difference for protecting water quality—right along the streams—and encourages landowners to keep their more developable lands in private hands.”⁸ Properties in the program are relatively small

⁵ 40 C.F.R. § 141.71(b)(2)(iii).

⁶ New York City Dep’t of Env’tl. Protection, Watershed Protection Program Summary and Assessment 5 (2021), available at <https://www1.nyc.gov/assets/dep/downloads/pdf/about/filtration-avoidance-determination/2021-watershed-protection-program-summary-and-assessment.pdf>.

⁷ The National Academies of Sciences Engineering and Medicine, *supra* note 1, at 220-221.

⁸ Catskill Center, Streamside Acquisition Program Fact Sheet 1 (2021).

and are situated within 300 feet of streams. These streamside areas have high proportions of surface water, wetlands and floodplains, which are features that can help mitigate local flooding during large storms, in addition to improving water quality.

Catskill Center staff should also be tasked with ensuring that the City's Watershed Protection Program facilitates increased participation in the flood buy-out program. This strategy is an essential tool for protecting water quality while reducing community flood hazards. At minimum, the program should be appropriately funded and staffed to ensure its continued availability. We agree with other stakeholders that a reverse mortgage financing structure should be available for this program.

Similarly, we believe that a strong Watershed Agricultural Program, including a permanent farm conservation easement program, should be continued. This program is an asset to water quality protection, while providing a wide range of other benefits for all New Yorkers. Indeed, safeguarding and supporting the Catskill Region's working farms is vital for preserving communities' rural heritage and scenic beauty, and the agricultural and tourism economies that depend on them.

Finally, we support a modification of the land acquisition program recommended by the National Academies that would allow "land swaps" as a mechanism to increase both water quality protection and economic sustainability. Under such an initiative, New York City would be encouraged to transfer to localities previously acquired watershed lands that have lower water quality value in exchange for lands that meet more stringent water quality criteria. Lands traded back to localities could potentially be used to facilitate siting of utilities and other important infrastructure, as well as for private residential and commercial development, where appropriate.

In sum, the New York State Health Department was correct in 2014 when it concluded as part of the New York City Filtration Avoidance review that year: "Land acquisition is one of the most effective, and therefore, important mechanisms to protect the City's Catskill/Delaware watershed."⁹

II. A Study of the Watershed Protection Program's Impact on Watershed Community Vitality Should Move Forward, As Should Renewed Support for Sustainable Economic Development in the Catskills

The National Academies correctly state that the Watershed Agreement "seeks to not only protect drinking water, but also rural communities in the watershed."¹⁰ We recognize that many Upstate

⁹ N.Y. State Dep't of Health, Mid-Term Revisions to the 2007 Surface Water Treatment Rule Determination for New York City's Catskill/Delaware Water Supply System 33 (2014).

¹⁰ The National Academies of Sciences Engineering and Medicine, *supra* note 1 at 361.

communities, both within and outside the Watershed, are facing population declines, pockets of poverty and insufficient public investment. For communities in the Watershed, there is the additional challenge of maintaining community vitality in a way that also protects water quality. Accordingly, the National Academies recommend that the City assess economic vitality and social well-being in the West-of-Hudson NYC Watershed.

We strongly support that recommendation. We believe that the assessment should include an in-depth study of impacts of the City's overall Watershed Protection Program on communities within the Watershed and on downstream communities, including those along Lower Esopus Creek. Finally, we urge that the Filtration Avoidance revision process now underway include requirements that New York City continue to provide sufficient funding for the next five years to ensure vibrant watershed-based programs including sewage and septic system upgrades and pump-outs, roadway repair, streambank stabilization and sustainable development via the Catskill Watershed Corporation's Catskill Fund for the Future.

Thank you for your consideration of these important issues.

Respectfully submitted,



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Natural Resources Defense Council

Cc (via email):

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Hon. Chuck Schumer, United States Senator
Hon. Antonio Delgado, United States Congressman
Hon. Kathy Hochul, New York State Governor
Fred Akshar, New York State Senator
Michelle Hinchey, New York State Senator
Mike Martucci, New York State Senator
Peter Oberacker, New York State Senator
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Gregg Cross, Supervisor, Town of Prattsville
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Jerry Fairbairn, Supervisor, Town of Hardenburgh
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